FILED
FEB 23 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 573

ESTATE OF RALPH RAINGER, Deceased, Elizabeth Rainger, Executrix,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Estate of Ralph Rainger, deceased, Elizabeth Rainger, Executrix, prays that a writ of certiorari issue to the United States Court of Appeals for the Ninth Circuit to review its decree [R. 265] which affirmed the judgment of the Tax Court of the United States [R. 228] re-determining a deficiency of Federal Estate tax against the petitioner [R. 228].

Opinions Below.

There was no opinion of the Court of Appeals excepting its brief affirmance of the decision of the Tax Court [R. 264] reported in 183 F. 2d 587, and excepting its brief denial of the petition for rehearing [R. 266].

The opinion of the Tax Court of the United States [R. 212] is reported in Vol. 12 Tax Court Reports 483.

Jurisdiction.

This proceeding arises from a decision of the Tax Court [R. 228] re-determining a deficiency of the Federal estate tax under Sections 810-824 of the Internal Revenue Code.

The judgment of the Court of Appeals was entered on August 20, 1950 [R. 265]; and the petition for re-hearing filed on September 15, 1950 [R. 266] was denied by that Court on December 20, 1950 [R. 266].

The jurisdiction of this Court is invoked under 26 U. S. C. A., Sec. 1141(a) and under 28 U. S. C. A., Section 1254(1).

Constitutional Provisions and Statutes Involved.

Article IV, Section 1, United States Constitution, provides:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may be general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

28 U. S. C. A., Section 687, provides:

> ". . . The records and judicial proceedings of the courts of any State . . . shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. AND THE SAID RECORDS AND JUDICIAL PROCEEDINGS, SO

AUTHENTICATED, SHALL HAVE SUCH FAITH AND CREDIT GIVEN TO THEM IN EVERY COURT WITHIN THE UNITED STATES AS THEY HAVE BY LAW OR USAGE IN THE COURTS OF THE STATE FROM WHICH THEY ARE TAKEN." (Capitals supplied.)

28 U. S. C. A., Section 725, provides:

"*Laws of States as rules of decision.* The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

Questions Presented.

(1) Whether the Federal Tax authorities and courts may deny full faith and credit and refuse to adhere to a final decree of the California State Probate Court with jurisdiction of decedent's estate, which adjudicated that the decedent's interest in property was not community property but separate property (and which was against this petitioner on other issues, and was entered in a proceeding required by and in accordance with State Statutes and in which the State of California and petitioner were adverse parties, and of which proceeding statutory notice was given to the world, and which decree otherwise is conclusive and binding on the Federal Tax authorities and courts)—because during the trial in the State Court, the attorney for the State appeared to default on such issue after relying upon a statutory presumption in favor of the State, although admittedly contesting on other issues, and because the Tax Court held there was no real controversy on such issue, although there was on such other issues.

(2) Whether a proceeding required by and in accordance with State Statutes (and without which the administration of a probate estate cannot be completed under State law, and in which the State of California and the petitioner were adverse parties, and in which the State of California relied upon a statutory presumption in its favor), did present a real controversy so that a decree therein on an issue presented by the pleadings was based on a real controversy.

(3) Whether a State Probate Court decree (otherwise conclusive and binding on the Federal Tax authorities and courts) loses its conclusiveness because one of the parties thereto had anticipated therein the possibility of future Federal Estate Tax proceedings and desired to and did avoid an adverse decision in the State Probate Court on an issue as to the nature and extent of the decedent's interest in property which might otherwise have been later used adversely against said party in future Federal Estate Tax proceedings.

(4) Whether a second State Probate Court decree, a decree of partial distribution (which was made in accordance with the State Statutes, and on notice to the world as provided by statute and was an *"in rem"* decree in decedent's probate, and which like the previous State Probate Court decree determined the nature and extent of the decedent's interest in property), was conclusive and binding on the Federal Tax authorities and courts and was entitled to full faith and credit even though no one other than on behalf of petitioner appeared in the probate hearing.

(5) Whether the Federal Tax authorities and courts were bound to adhere to and give the same full faith and credit as is given by New York to the written articles of

association of a voluntary unincorporated association (Ascap) organized and existing under the laws of New York, and which articles governed and bound its members including the decedent and specified decedent's interest only as a life estate, or whether they were permitted to hold contrary thereto and that the decedent's interest was more than a life estate.

Statement of the Case.

In December, 1942, the petitioner gave written notice to the Collector of Internal Revenue as provided in 26 U. S. C. A., Section 820 of the pendency of the probate [R. 12, 28].

On March 21, 1945, the California State Probate Court made a final decree [Pet. Ex. 7, App. No. 1], in the decedent's probate determining that the decedent's interest in property was not community property but was separate property and held against this petitioner on other substantial issues.

Thereafter, the State Court, on a petition, made a decree of partial distribution in which it found the petition to be true and in effect confirming that the property was not community property but was separate property and decreeing a partial distribution accordingly. [Pet. Ex. 8; App. No. 2.]

Notwithstanding the State Court decrees, the Commissioner held contrary and that the property was community property and not separate property [R. 22] and accordingly determined a deficiency in the Federal Estate tax [R. 23].

Additionally, the decedent was a member of the American Society of Composers, Authors and Publishers (Ascap) at the time of his death [R. 13, 28], and the written Articles of Association [Pet. Ex. 1] of such voluntary unincorporated association organized and existing under the laws of New York [R. 198] governed the members and decedent's rights in Ascap [R. 13-14, 36], and contained provisions which made his interest merely a life interest ceasing upon his death [Pet. Ex. 1, pp. 32-34].

The State of New York and its courts held that the articles of association of Ascap, a voluntary unincorporated association organized under the laws of New York, were the organic law of that association governing and determining the rights of the members, which included the decedent.

In *Gem Music v. Taylor,* 60 N. E. 2d 196, 294 N. Y. 34, the Court of Appeals of New York said:

> "The Articles of Association by which Ascap was governed are annexed to and made a part of the complaint. These Articles were the law of Ascap binding upon all its members."

Accord:

> *Broadcast Music v. Taylor,* 55 N. Y. S. 2d 94, 100.

The respondent disregarded the articles of association and held in effect that the decedent had more than a life interest therein, and contrary to the State Court decree, that the same was community property and not separate

property [R. 22], and accordingly determined a deficiency in the Federal Estate tax.

A petition for a re-determination of the deficiency was filed in the Tax Court [R. 7].

Exemplified copies of the first State Court decree and of the second State Court decree of partial distribution duly authenticated in accordance with the requirements of 28 U. S. C. A., Section 687, were introduced in the Tax Court [Pet. Exs. 7 and 8; App. Nos. 1 and 2; R. 88-92; 93-94].

The Tax Court refused to be bound by or follow the determination of the Probate Court decrees as to the decedent's interest in the property as being not community property but separate property, and held contrary thereto and that the property was community property and not separate property [R. 217].

The Tax Court held that the first State Court decree [Pet. Ex. 7; App No. 1] did not result in a proceeding that was a real controversy [R. 205], even though the State of California was a party thereto, even though some substantial issues were decided against this petitioner, even though the proceeding was not only in accordance with but required by the State statutes, even though the State of California expressly relied upon statutory presumptions in favor of its position and the report [Resp. Ex. X, p. 9; R. 171].

The Tax Court also held that the second State Court decree [Pet. Ex. 8; App. No. 2], namely, the decree of partial distribution, was not binding, since the proceeding

was wholly uncontested and the court decree was a mere copy of the petition which recited and relied upon the previous Probate Court decree [R. 220]—notwithstanding that proceedings for a decree of partial distribution are *in rem* proceedings based on notice to the whole world and in accordance with State statutes.

The Tax Court held that although there was a real controversy and a bitter contest on other issues such as the Ascap issue in the proceeding between the State of California and the petitioner, yet that on the issue as to whether it was community property or not that there was no real controversy [R. 220.]

Although the State Probate Court had ruled against the petitioner in the probate estate and held that the decedent's interest was more than a life estate [Pet. Ex. 7, par. first; App. No. 1] and in making such holding also held that such interest was not community property [Pet. Ex. 7, par. first; App. No. 1], and although the Tax Court stated that the controversy on the Ascap issue was bitterly contested [R. 220], . . . the Tax Court did not agree with the determination that it was not community property, and declined to adhere to the decision of the State Court even on the contested issue and treated the Ascap issue *de novo* and as though there had been no State Court proceeding [R. 221], and held as the State Court did, that the decedent had more than a life interest in Ascap, but ruled contrary to the State Court that the said issue was community property and not separate property [R. 221-2].

The Tax Court decided that there was a deficiency in the estate tax [R. 228]; from such decision, a petition for review was filed in the Court of Appeals for the Ninth Circuit [R. 230-242].

The Court of Appeals made an order affirming the judgment of the Tax Court [R. 264], and entered its judgment [R. 265]; on December 20, 1950, the Court of Appeals made its order [R. 266] denying the petition for rehearing which had been filed within the time allowed therefor by the Court [R. 266].

Specification of Errors to Be Urged.

The Court of Appeals erred:

(1) In failing to hold that either one if not both of the two final California Probate *"in rem"* decrees, which determined the decedent's interest in property, and which were made in accordance with the State Statutes, were conclusive and binding upon the respondent and Federal Courts in applying the Internal Revenue Code.

(2) In failing to hold that the respondent and Federal Courts were required to adhere and give full faith and credit to the written Articles of Association of Ascap, a voluntary unincorporated association organized and existing under the laws of New York, and which the courts of New York have held were binding upon the members of the Society, and which specified the decedent's interest therein as a life estate.

REASONS FOR GRANTING THE WRIT.

I.

Regarding the Conclusiveness of the Two (2) Final State Probate Court Decrees Determining Decedent's Interest in Property:

First: The decisions of the courts below are directly in conflict with the decisions of this Supreme Court and the other Courts of Appeal which held the rule to be well settled that State law controls in determining the nature and extent of the interest or estate which a taxpayer has in property and in applying the Internal Revenue Code, and that the decision of the State Court thereon is conclusive upon the Federal tax authorities and courts in applying the Internal Revenue Code.

United States Constitution, Article IV, Section 1;

28 U. S. C. A., Section 687;

28 U. S. C. A., Section 725;

Freuler v. Helvering, 291 U. S. 35, 78 L. Ed. 634;

Blair v. Commissioner, 300 U. S. 5, 81 L. Ed. 465;

Henricksen v Baker-Boyer, 139 F. 2d 877 (C. C. 9, 1944);

Eisenmenger v. Commissioner, 145 F. 2d 103, 106 (C. C. 8);

Estate of Whitney Waterman, Memo. T. C., Docket 1911, Aug. 7, 1946;

Morgan v. Commissioner, 309 U. S. 78, 84 L. Ed. 585;

Masterson v. Commissioner, 141 F. 2d 399;

Nashville v. Commissioner, 136 F. 2d 148;

First National Bank v. Commissioner, 39 B. T. A. 828;

Bullard v. Commissioner, 90 F. 2d 144.

In the *Freuler* case, this Court reversed the Court of Appeals for the Ninth Circuit and held that the decree of the California Probate Court, with reference to the property rights in the estate, was conclusive and binding upon the tax authorities, even though the parties in the Probate Court proceedings had anticipated the use of the State Court decree in the Federal tax proceedings; this Court said:

> "Moreover, the decision of that court, until reversed or overruled, establishes the law of California respecting distribution of the trust estate . . . The rights of the beneficiaries are property rights and the court has adjudicated them. What the law as announced by that court adjudges distributable is, we think, to be considered in applying 219 of the Act of 1921. . . . The decree purports to decide issues regularly submitted and not to be in any sense a consent decree. The court ruled against the remainderman on one point, and in his favor on another, that here involved. . . . We cannot seize on the form of the settlement made between the parties either to impugn the good faith and judicial character of the state court's decree, or to ignore the decree and its conclusiveness as to what was in fact and in law income distributable to the beneficiaries under the trust. The judgment of the Court of Appeals is reversed."

In the *Blair* case, this Court reversed the Court of Appeals and followed the *Freuler* case.

The decisions of the courts below in the instant case are directly in conflict with the decisions of the same Court

of Appeals for the Ninth Circuit in *Henricksen v. Baker,* 139 F. 2d 877, and also of the Court of Appeals for the Eighth Circuit in *Eisenmenger v. Commissioner,* 145 F. 2d 103, and in *Helvering v. Rhodes Estate,* 117 F. 2d 509.

In the *Henricksen* case, the Ninth Circuit Court, relying on the *Freuler* and *Blair* cases of this Court, held that the probate proceeding was one *in rem* and that since the statutory provisions regarding service and notice were observed, it was binding upon "all persons in the world" and that the decree of the Washington State Probate Court in connection with the hearing fixing inheritance taxes, which determined certain facts as to the nature and extent of the interest of the parties in property in the estate, was conclusive and binding on such questions in a later proceeding on a Federal Estate Tax return.

In the *Eisenmenger* case, the Eighth Circuit Court held that the State Court decision was conclusive and binding upon the Federal Court in a tax matter; there had been a previous trial in the Tax Court; the taxpayer even introduced a Tax Court record in the State Court proceeding, indicating that the taxpayer anticipated using the State Court decision in the second Tax Court proceeding; the Court held that the State Court decree was conclusive and binding on the Federal Court in the second Tax Court proceeding.

In the *Helvering* case the Eighth Circuit Court also held that the State Court decree that the decedent did not own stock in question at the time of her death, was con-

clusive and binding upon the tax authorities and Federal Courts.

The decision in the instant case is also directly in conflict with the decision of the District Court for the Southern District of California where this Tax Court proceeding was tried, namely, *Brooks v. United States,* 84 Fed. Supp. 622 (D. C. S. D. Cal. 1949).

The same kind of order as the first State Court decree [Pet. Ex 7; App. No. 1] was held in the *Brooks* case to be conclusive and binding upon the Federal tax authorities; the order was made on similar report of an appraiser appointed by the same Probate Court who determined the decedent's interest in the property; no formal hearing was had on the report; no evidence was introduced; and yet upon the basis of the appraiser's report alone and the statutory presumptions, the same California State Probate Court made the decree adjudging the decedent's interest in property.

The Federal tax authorities refused to be bound by the State Court order in the *Brooks* case; however, the District Judge held that they were bound by such decree and that California law controlled in determining the nature and extent of the decedent's interest in applying the Internal Revenue Code, and that the decision of the State Probate Court was conclusive upon the Federal tax authorities—notwithstanding that the Commissioner cited and relied in the *Brooks* case on the Tax Court decision in this *Rainger* case.

Second: The questions presented are of importance in the tax law as well as in the field of state property and probate laws, and in the field of constitutional law.

The settlement of the questions by this Court is plainly in the public interest since it is likely to be presented in numerous tax cases, where State Probate Courts determine within their jurisdiction the title to property and the Federal tax authorities and courts rule opposite thereto and disregard such State Court decrees.

The effect of the decisions in the instant case is to impugn the good faith and judicial character of the State Court decrees, valid on their face, in proceedings required by or in accordance with State Statutes, after notice to the entire world in accordance with the statutes, and where the State Courts admittedly have jurisdiction, and in a field of local law as to the nature and extent of the decedent's interest in property; it appears that this is contrary to the spirit and letter of the full faith and credit clauses of the Constitution (Article IV, Section 1) and statutes (28 U. S. C. A., Secs. 687 and 725) and of the decisions of this Supreme Court in *Freuler v. Helvering, supra*, and *Blair v. Commissioner, supra.*

The effect of the decisions in the instant case is to impair the finality and effectiveness of the State Probate Court decrees, and to create confusion and instability with reference to titles to property in estates, with the State Courts determining the title to property in one way, and the Federal Courts disagreeing therewith and determining them in an opposite way; thus, creating clouds on the title to property secured in or through probate proceedings.

The effect of the decisions of the lower courts is to make an exception to the full faith and credit clauses, as well as the rule requiring the Federal Courts to follow local law, so that local final judgments are entitled to full faith and credit only when there are no default judgments or unopposed judgments even though there are involved substantial adverse parties, like the State of California, and notwithstanding that notice of the *"in rem"* proceedings is given to the world in accordance with State Statutes.

Third: The decisions of the courts below are believed to be erroneous.

Exemplified copies of both of the State Court decrees duly authenticated in accordance with the requirements of 28 U. S. C. A., Section 687, were introduced in the Tax Court [Pet. Exs. 7 and 8; App. Nos. 1 and 2].

Such decrees were valid on their face and showed that they were made within the jurisdiction of the Court; it was admitted by the respondent that the State Court was a Court of competent and proper jurisdiction for the probate of the decedent's estate [R. 11, 36], and that the decrees were final [R. 193].

The decisions of this Court as well as the other Courts of Appeal establish a well-settled principle that the determination of the nature and extent of the decedent's interest in property by a State Probate Court is conclusive and binding upon the Federal tax authorities and courts. This rule was not applied by the Court below.

II.

Regarding Failure to Give Full Faith and Credit to the Articles of Association of Ascap Limiting Decedent's Interest to a Life Interest:

FIRST: The decisions of the courts below are directly in conflict with the decision of this Court in *United Commercial Travelers v. Wolfe,* 331 U. S. 586, 91 Law. Ed. 1687 (1947).

In the *United Commercial Travelers* case, this Court reversed the judgment of the Court below and held that the Court in South Dakota should have given effect to a provision of the Constitution of a fraternal society incorporated in Ohio which specified the rights and liabilities based upon membership rights of a decedent under the Constitution of that society, by reason of the full faith and credit clause of the Constitution of the United States.

In the instant case, the lower courts declined to give effect to the provisions of the articles of association of Ascap, a voluntary unincorporated association operating under the laws of New York [Resp. Ex. M, p. 4; R. 198].

The highest court of New York held that the articles of association of Ascap were the law of Ascap binding upon all its members.

Gem Music v. Taylor, 60 N. E. 2d 196, 294 N. Y. 34;

Broadcast Music v. Taylor, 55 N. Y. S. 2d 94, 100.

SECOND: The question presented is of importance not only in tax law, where by reason of the deaths of the numerous members of Ascap, this question will arise, but in the field of Constitutional law.

The settlement of the questions by this Court is plainly in the public interest, since it is likely to be presented in

numerous cases involving fraternal and similar societies, whose rights are fixed in their articles of association under the laws of the State of their organization.

The effect of the decisions in the instant case is to fail to give full faith and credit required by the Constitution of the United States to the organic law of fraternal and similar organizations.

THIRD: The decisions of the courts below are believed to be erroneous.

It was admitted by the respondent in the pleadings in this case that the decedent's rights in so far as Ascap was concerned were subject to the written articles of association of Ascap [R. 13-14, 36].

The written articles of association of Ascap provided in effect that the decedent had nothing but a life interest subject to termination at his death [Pet. Ex. 1, pp. 32-33].

The lower courts held that the decedent had more than a life interest [R. 221-2].

Conclusion.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfuly submitted,

GEORGE T. ALTMAN,
Counsel for Petitioner.

HARRY J. MILLER,
Of Counsel.

APPENDIX NO. 1.

(Pet. Exhibit No. 7.)

ORDER AND DECREE OF STATE PROBATE COURT
DATED MARCH 21, 1945.

[Title of Court and Cause.]

The report of the Inheritance Tax Appraiser, John R. Moore, having been filed in the above-entitled estate on or about May 9, 1944, and objections having been duly served and filed to said report, and thereafter amended objections having been duly served and filed to said report, and

The clerk of the above entitled court having duly fixed the time. in accordance with the Inheritance Tax Act of the State of California, for a hearing of the said report, objections and amended objections, and having duly given notice of said hearing as required by the Inheritance Tax Act of the State of California, and

The hearing on said report, objections and amended objections having been duly and regularly continued for trial from time to time until January 30, 1945, and

The hearing and trial on the said report, objections and amended objections and the issues drawn thereby, came on regularly for trial before this court in Department 24 thereof, Honorable Thomas C. Gould, Judge presiding, on January 30, 1945; a hearing and trial thereon was duly and regularly had on January 30, 1945, and on February 1, 6, 9 and 13, 1945; Donald R. Peck and Morton L. Barker, by Morton L. Barker, appearing as attorneys for the State Controller of the State of California, and Harry J. Miller appearing as attorney for the executrix and objector, Elizabeth Rainger; evidence, both oral and written, having been introduced; the proceedings and issues

having been contested and argued by and on behalf of the State Controller of the State of California and the Executrix and objector, Elizabeth Rainger; and the matter having been submitted to the Court.

First: The court decrees and finds that at the time of the death of the decedent, Ralph Rainger, he owned an undivided one-half (½) interest as his sole and separate property, and his wife, Elizabeth Rainger, owned the other undivided one-half (½) interest as her sole and separate property, in property held for the production of income, and which property consisted of the contract and membership rights in connection with contracts between the decedent and the American Society of Composers, Authors and Publishers, and particularly the contract dated June 27, 1935, and an extension contract with respect thereto dated September 12, 1938, and in connection with the subject matter and rights involved in the contract between Elizabeth Rainger and the said Society dated December 8, 1942, together with the present value and worth, as of the date of the decedent's death, of future royalties and income from the said Society and in connection with the said contracts; and the right, title and interest in musical works composed by the decedent during his lifetime, including the right of public performance thereof, the right to royalties, income and license fees thereon, and the copyrights, renewal rights and performance rights in connection with said musical works, and together with the present value and worth, as of the date of the decedent's death, of future royalties and income therefrom.

The court decrees and finds that upon the death of the decedent, Ralph Rainger, the said undivided one-half (½) interest of the decedent as his sole and separate property in the foregoing property held for the production of in-

come actually was transferred to and acquired by his wife, Elizabeth Rainger, by bequest, devise and inheritance, from the decedent, Ralph Rainger, and under and by virtue of the last will and testament of the decedent, Ralph Rainger.

The court decrees and finds that at the time of the death of the decedent, Ralph Rainger, the clear and fair market value of the said undivided one-half (½) interest of the decedent as his sole and separate property in the foregoing property held for the production of income was $20,000.00.

Second: The court decrees and finds that the property,—in the Inventory and Appraisement, in the Supplementary Inventory and Appraisement, in the report of the State Inheritance Tax Appraiser, and on Exhibit "A" attached to the Amended Objections to the report of the Inheritance Tax Appraiser,—and that any property in which the decedent, Ralph Rainger, had any interest, at the time of his death, was not the community property of the decedent, Ralph Rainger, and his wife, Elizabeth Rainger, and that there should not be any deduction as a community property exemption; and that the said property, and any property in which the decedent had any right, title or interest of any kind at the time of his death, was owned by the decedent, Ralph Rainger, and his wife, Elizabeth Rainger, as tenants in common, and that only an undivided one-half (½) interest therein was owned by and belonged to the decedent at the time of his death as his sole and separate property, and the other undivided one-half (½) interest therein was owned by and belonged to the decedent's wife, Elizabeth Rainger, as her sole and separate property; and that only the undivided one-half (½) interest of the decedent, Ralph Rainger, was

transmitted, passed and transferred to Elizabeth Rainger upon and by the death of the decedent, Ralph Rainger, under his last will and testament; and that only the value of the said undivided one-half (½) interest of the decedent, Ralph Rainger, should be included in the determination and fixing of the inheritance tax.

The court decrees and finds that at the time of the death of the decedent, Ralph Rainger, the clear and fair market value of the said undivided one-half (½) interest of the decedent as his sole and separate property, exclusive of that set forth in paragraph First of this Order, was $104,627.40.

Third: The court finds and decrees that the statutory exemption in this estate in connection with the inheritance tax is $24,000.

Fourth: The objection to that portion of the inheritance tax report which provides that there was and is real estate of the value of $510.00 and which real estate was more generally referred to as the Norwalk property, should be and is hereby overruled.

Fifth: The court decrees and finds that the clear and fair market value of the said property, at the time of the death of the decedent, Ralph Rainger, was $124,627.40; and that deductions which should be made from the said property for the purpose of determining and fixing the inheritance tax are a total of $9,627.40.

The court decrees and finds there is an insurance exemption of $50,000.00; and there is a statutory exemption of $24,000.00.

The court decrees and finds, and it is hereby ordered, that the inheritance tax in the above entitled estate be, and the same is hereby fixed at the sum of $1,370.00.

THOMAS C. GOULD,
Judge of the Superior Court.

APPENDIX NO. 2.

(Portion of Pet. Exhibit No. 8)

ORDER AND DECREE OF STATE PROBATE COURT OF PARTIAL DISTRIBUTION DATED AUGUST 10, 1945.

(Title of Court and Cause.)

The Petition of Elizabeth Rainger, as executrix of the estate of Ralph Rainger, deceased, and as sole devisee and legatee under the Last Will and Testament of the decedent, for Partial Distribution having been filed in the above entitled court on or about July 23rd, 1945; the Clerk of the above entitled court having duly appointed and fixed August 10th, 1945, in accordance with the statutes of California for a hearing of the said petition; notice of the time and place of the said hearing having been duly given as required by the statutes of California;

The said Petition for Partial Distribution, together with an Amendment thereto, and an affidavit regarding the payment of claims, having been duly filed and presented to the court; the court, after hearing the evidence, and considering the said petition, amendment thereto, and affidavit, and the papers, records and orders on file in the above entitled court in this State, finds that the allegations of Petition for Partial Distribution as amended are true, and

On March 21, 1945, the court in the above entitled estate made, signed and filed its order fixing the inheritance tax in the above entitled estate at the sum of $1,370.00, and determining issues raised by the inheritance tax appraiser's report and the objections thereto; no appeal was taken from said order and it has become final; the court finds that the said inheritance tax has been paid, and

The court finds that the time for the filing or presenting claims against the estate has expired, and that all uncontested claims have been paid; and

The court finds that the estate is not in a condition to be finally closed or distributed, and that the allegations of the Petition for Partial Distribution are true, and that no injury will result to the estate or any person interested therein by reason of the distribution herein ordered; and

The court finds, adjudges and decrees that no bond from the said Elizabeth Rainger or anyone else is necessary in connection with the partial distribution, and any bond in connection therewith be and the same is hereby dispensed with;

It is therefore hereby ordered, adjudged and decreed that the said right, title and interest of the decedent, Ralph Rainger, in and to the assets set forth on Exhibit A attached to this order be and the same is hereby distributed to Elizabeth Rainger, as devisee and legatee under the last will and testament of the decedent, and that no distribution shall be had, until further order of this court, of the said right, title and interest of the decedent, Ralph Rainger, in the assets set forth on Exhibit B attached to this order.

Los Angeles, California, August 10th, 1945.

JOHN GEE CLARK,
Judge of the Superior Court.

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(Attached Exhibits of Assets.)

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 573

ESTATE OF RALPH RAINGER, DECEASED, ELIZABETH RAINGER, EXECUTRIX, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 194–224) are reported in 12 T. C. 483. The opinion of the Court of Appeals (R. 264) is reported in 183 F. 2d 587.

JURISDICTION

The judgment of the Court of Appeals affirming the decision of the Tax Court was entered on August 22, 1950. (R. 265.) A petition for rehearing filed on September 15, 1950, was denied on December 20, 1950. (R. 266.) The petition

for a writ of certiorari was filed February 23, 1951. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

1. Whether the federal courts are bound in an estate tax proceeding by orders of a state court entered in a nonadversary proceeding holding that property which the Commissioner had included in the decedent's gross estate as community property was not such but was held by the decedent and his wife during his lifetime as tenants in common.

2. Whether the decedent died seized of rights in copyrighted music of the stipulated value of $50,000, which was includible in his gross estate at his death.

STATUTE INVOLVED

Internal Revenue Code:

> SEC. 811 GROSS ESTATE.
>
> The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—
>
> * * * * *
>
> (e) [as amended by Section 402 (b) of the Revenue Act of 1942, c. 619, 56 Stat. 798] Joint and Community Interests.—
>
> * * * * *

(2) *Community interests.*—To the extent of the interest therein held as community property by the decedent and surviving spouse under the law of any State, Territory, or possession of the United States, or any foreign country, except such part thereof as may be shown to have been received as compensation for personal services actually rendered by the surviving spouse or derived originally from such compensation or from separate property of the surviving spouse. In no case shall such interest included in the gross estate of the decedent be less than the value of such part of the community property as was subject to the decedent's power of testamentary disposition.

* * * * *

(26 U. S. C. 1946 ed., Sec. 811.)

STATEMENT

The facts as found by the Tax Court (R. 197–212) may be summarized as follows:

The decedent, Ralph Rainger, was a song writer who died in California on October 23, 1942. His widow qualified as the executrix of his estate. They owned no property of any importance prior to 1930, when they moved to California, where he was employed as a song writer by various motion picture studios. In 1931, the decedent was elected to membership in the American Society of Composers, Authors and Publishers, a voluntary unincorporated association organized

under the laws of New York, commonly known as Ascap. (R. 197–198.)

Under the decedent's agreement with Ascap, he transferred his rights to his compositions to it with exceptions not here material. Under Ascap's articles of association, the decedent's widow, as sole legatee under his will, succeeded to his rights as a member of the association at his death and received the distributions from it which he would have received had he continued to live. (R. 199–201.)

The decedent received $50,000 from Ascap in his lifetime, and his yearly receipts from movie studios progressed from $10,000 to more than $66,000.[1] At first, his earnings were deposited in a joint account carried in his and his wife's names. But in 1938, because of his improvidence, such earnings were placed in a separate account in his wife's name. For a short time in 1941, the funds were replaced in a joint account, but, for the same reasons, were returned to her separate account later in that year. (R. 201–202.)

[1] It was stipulated in the case at bar that at the time of their marriage, the decedent and his wife had nothing (R. 130), and that any money of any importance that he acquired was acquired by him after he and his wife went to California in 1930 (R. 129). Mrs. Rainger testified at the trial that the decedent had earned all of the money; that she did not work in California; and that she had not received any gifts from any one, or any inheritance or legacies after coming to California. (R. 127.)

From the time the decedent went to California, he and his wife made returns of their federal income taxes on the community property basis, and the first estate tax return which she filed as executrix after his death listed the property as community property (R. 203). The decedent's will was admitted to probate on November 19, 1942, in the California Superior Court and the state inheritance tax appraiser, on May 9, 1944, filed his report claiming that the decedent had left after-discovered property in the form of domestic and foreign copyrights, including performance and renewal rights, as evidenced and affected by his contract with Ascap. (R. 203–204.)

In her original objections to the inheritance tax appraiser's report, the executrix merely denied there was such property. But in her amended objections, filed after the instant federal tax controversy arose, she alleged that if the state court should find that the decedent held such interests, they were owned by the decedent and his wife as tenants in common and not as community property. (R. 204.) In the state probate case the issue of whether there existed in the decedent's estate, at the time of his death, the additional property described in the report of the inheritance tax appraiser, was completely and thoroughly litigated (R. 204), but there was no real controversy between the parties as to the separate community property issue (R. 205).

The attorney for the estate advised the state court that the community property issue made no difference for state inheritance tax purposes, but that it did make a difference for federal estate tax purposes, in that, unlike the state inheritance tax authorities who would include only one half of the property in the gross estate whether it should be considered as community or separate, the federal authorities contemplated taxing the entire property by virtue of the Internal Revenue Code which, as amended two days before the death of the decedent, authorized the inclusion in the gross estate of the entire community property[2] (R. 205). In connection with

[2] In his opening statement to the state probate court, the attorney for the estate stated that the probate court's determination of the question whether the property was community or separate property would seriously affect the rights of the widow with respect to the federal estate tax, although the determination of the federal tax was not before that court. He likewise stated that, for that reason, he intended to introduce evidence in connection with the point to show that under an agreement between the decedent and his wife the status of the property was changed in 1938 from community property to separate property, because he did not want to rely on a consent judgment. (R. 205–208, footnote 1.) The attorney for the state controller stated that he was not concerned with the issue, since the state was taxing only one-half of the property however it might be decided, and that he would not argue either way (R. 206–207, footnote).

In the case at bar, Mrs. Rainger testified on cross-examination before the Tax Court that she did not know the difference between community property and tenancy in common and separate property, and that she had never had any discussion with the decedent regarding the nature of the hold-

the community property issue, the executrix and a bank manager testified concerning the separate bank accounts, but there was no cross-examination, no documentary evidence, no opposing claim, and no argument on the merits (R. 205).

On March 21, 1945, the state court entered its order in the appraisal proceeding, determining the issues in connection therewith. In addition, the state court found that the decedent and his wife each owned a one-half interest in separate property, including the decedent's rights under his contract with Ascap, and that the decedent's undivided one-half interest in such rights had a value of $20,000 at the time of the decedent's death. (R. 206–209.) A subsequent order for the partial distribution of the estate was entered by the state court in the probate proceedings proper upon a petition filed by the executrix,

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ings of the property they had (R. 121); that she did not know whether it was held in joint tenancy by them or not (R. 134); that she did not know whether it was community property or not (R. 141); that, as a result of general conversations she had had with her husband she always felt that she owned one-half of the property and that he owned the other half, and that she was sure he felt that way (R. 151); that she did not know the difference "to this day" between community and separate property (R. 154); and that all she knew was that half belonged to her and half to the decedent, and that whether it was called community or separate she did not know (R. 157). And on redirect examination, she indicated that she had signed the amended objections in the state probate case claiming the property owned to be separate, only because the attorney for the estate had, in the meantime, changed his opinion as to the status of the property (R. 148–149).

reciting that court's previous order in the appraisal proceeding. (R. 209–210.)

In determining the federal estate taxes due from the decedent's estate, the Commissioner included in the gross estate the value of the entire property (R. 19–23), in accordance with Section 811 (e) (2) of the Internal Revenue Code, *supra,* p. 3, and the executrix petitioned the Tax Court for a review of the Commissioner's determination, claiming that the property in the decedent's estate was not community property, but that she and the decedent each owned one-half thereof separately, *i. e.,* as tenants in common (R. 7–17).

The Tax Court found that there had been no real controversy between the parties to the appraisal proceeding in the state probate court with respect to the community property issue, as was evidenced by the statement made at the appraisal hearing by the state controller, and the fact that the attorney for the estate had advised the state court at the same hearing that the issue made no difference for state inheritance tax purposes, but only for federal estate tax purposes (R. 205). See footnote 2, *supra,* p. 6. The Tax Court then concluded that all of the property in question was community property, and that, at the time of his death, the decedent was possessed of property rights in and to certain musical compositions of a stipulated value of $50,000 (R. 209). Accordingly, it sustained the Commissioner's determination that the entire property, including

the decedent's musical composition rights, was includible in the gross estate as community property. (R. 212–222.)

On appeal to the Court of Appeals for the Ninth Circuit, that court affirmed the Tax Court's decision in a *per curiam* opinion (R. 264).

ARGUMENT

1. The Tax Court was clearly correct in refusing to be bound by the orders of the Superior Court of California, entered on an uncontested, nonadversary issue in a probate proceeding, holding that the property in the decedent's estate was not community property but was owned by the decedent and his wife during his lifetime as tenants in common. This decisive order of the state court was entered in an appraisal hearing which involved the liability of the estate for state inheritance taxes. In the appraisal proceeding, the executrix posed an issue concerning the status of the property in the estate, but there was no need for a decision on the question whether the property was held separately or as community property, since the state would tax only one-half of it in any event. Thus, the only purpose of the executrix in raising the community issue in the state court was to obtain a decision of that court that the property was held separately, which the representatives of the estate hoped would be binding on the federal courts in a forthcoming federal estate tax proceeding, and which

would have the effect of reducing the federal estate taxes due from the estate. And it is obvious from the statements made by the attorney for the estate in the state court, that the sole purpose of adducing evidence on the issue whether the property was held separately was to give the semblance of a controversy to that part of the proceeding, since it was his avowed purpose to avoid a consent decree, the attorney for the state having indicated that he would not contest the particular issue in any manner.

The Tax Court concluded that the rule announced by this Court in *Freuler* v. *Helvering,* 291 U. S. 35, and *Blair* v. *Commissioner,* 300 U. S. 5, to the effect that decisions of state courts in certain matters are binding on the federal courts, applies only to a state court decision rendered in proceedings presenting a real controversy, which settles an issue regularly submitted, and which is not, in any sense, a consent decree. That interpretation of the above-cited decisions is plainly correct. There is nothing in those decisions to indicate that this Court contemplated that state decisions would be binding on federal courts where the state court decisions are based on feigned issues. On the contrary, it is implicit in this Court's decision in the *Freuler* case, page 45, that collusive or consent decrees are not binding on the federal courts. In the case at bar, the state court's decision that the property in the decedent's estate was held by the

decedent and his wife as tenants in common was dispositive solely of an uncontested issue which was entirely beyond the controversy then before that court, an issue feigned, with the tacit consent of the only other party to the proceeding, to secure a reduction in federal estate taxes. In view of the fact that the widow was the sole devisee under the will, it is plain that there could be no controversies with other parties in the probate proceedings with respect to the status of the property.

Since the facts in the case at bar clearly bring it within the exceptions recognized by this Court in the *Freuler* case, *supra,* there is obviously no merit in petitioner's contention (Pet. 10) that the decision of the court below is in conflict with the decisions of this Court in the *Freuler* and *Blair* cases, *supra.* And petitioner's further assertion (Pet. 10) that the decision of the court below is in conflict with *Helvering* v. *Rhodes' Estate,* 117 F. 2d 509 (C. A. 8); *Henricksen* v. *Baker-Boyer National Bank,* 139 F. 2d 877 (C. A. 9); and *Eisenmenger* v. *Commissioner,* 145 F. 2d 103 (C. A. 8), is likewise without merit. The *Rhodes* case was plainly stated by the court to be an adversary proceeding, and the *Henricksen* and *Eisenmenger* cases both involved instructions to trustees in connection with adverse interests. In the circumstances, no conflict exists between the cited cases and the decision of the court below.

Moreover, there is no basis for the taxpayer's contention that in 1938 the decedent and his wife, by an agreement entered into in that year, converted their community property into separate property and that it was held by them thereafter as tenants in common. The evidence introduced before the Tax Court clearly does not justify a finding that the decedent and his wife had entered into such an agreement in 1938. Accordingly, the decision of the Tax Court is correct that the property at all times was and remained the community property of the parties. The appellate court therefore committed no error in affirming the decision of the Tax Court on this point.

2. The taxpayer's contention (Pet. 16) that neither the Tax Court nor the court below gave full faith and credit to the articles of association of Ascap, as it was allegedly required to do under the decision of this Court in the case of *Order of Travelers* v. *Wolfe,* 331 U. S. 586, is pointless. The question here is whether the decedent was seized of certain property rights arising out of the transfer of his copyrighted music to Ascap, which were transferred to his widow under his will at the time of and as a result of his death. Ascap's articles of association recognized that these rights survived the decedent and were transferred at his death either by his will or under the intestacy laws. It was stipulated that these rights then had a value of $50,000. The decedent's wife succeeded thereto upon his death as

the sole beneficiary under his will. Ascap acknowledged this by an agreement with her which it executed in confirmity with its articles. And, pursuant to this agreement, Ascap paid her the amounts which it would otherwise have paid the decedent had he continued to live.

We find nothing in the *Wolfe* case which is in conflict with the holding of the Tax Court that there were rights in the decedent's estate which passed to the widow on his death. There is, therefore, no merit in petitioner's contention that the value of the decedent's rights here in question was not includible in his gross estate at his death.

CONCLUSION

The decision of the court below, which rests on the particular facts of the case, is clearly correct, and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1951.

U. S. GOVERNMENT PRINTING OFFICE: 1951